UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,835	10/30/2003	Merrie Martin	88265-14036	7200

28765 7590 06/30/2004

WINSTON & STRAWN
PATENT DEPARTMENT
1400 L STREET, N.W.
WASHINGTON, DC 20005-3502

EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/695,835	MARTIN, MERRIE	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 October 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claims 1 and 10 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Line 4, the phrase " such that when fresh baked brownies are desired" is unclear because the claim has not set forth that the dough is a brownie dough; thus, it is not clear if the claim is claiming a method for making any baked product or a brownie product.

Claim 10 has the same problem as claim 1.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drantch et al

Drantch et al disclose a dough and a method of making fresh baked product from the dough. The dough include brownie doughs. The dough is placed in a sealed

container. The dough is prepared into finished baked goods by simple addition to a suitable baking container or pan and baking to form a finished baked good. (see col. 6 lines 56-63, col. 11 lines 1-25)

With respect to claim 1,Drantch et al do not disclose providing the dough in the form of a bar. They do not disclose the shape and sizes as claimed in claims 2-3.

It would have been obvious to one skilled in the art to form the dough into any shape depending on the type of product intended to be made from the dough. For example, brownies are usually formed into bar shape; thus, it would have been obvious to shape the brownie dough into bar shape, or it would have been obvious to shape the dough as oval, round, or any shape to make the dough more attractive and appealing. It would also have been obvious to make dough in any thickness, width and length depending on the size wanted for the final product. This would have been an obvious matter of preference.

Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blaschke et al (WO 01/06858).

Blaschke et al disclose a ready-to-use bakery dough product which is preserved in the refrigerator. The dough is firm during storage but spread well during baking. The dough is a brownie dough and can have different configurations and materials as recited on page 8 lines 1-11. The dough is wrapped in synthetic material. The dough is formed in the shape of a block and the block is broken into pieces to be baked. The dough comprises about 10-40% flour, about 10-40% sugar, 10-25% fat selected from lard, tallow, margarine, maize oil, copra oil, palm oil, sunflower oil, soybean oil, .03-1%

leavening agent, 0-10% texturing agent such as whole egg or egg white. Flour or combination of starch/flour can be used. The dough block has a thickness of 1-3 cm. The dough include inclusions of various edible materials; the size of the inclusions may vary between about 1-10mm and includes in about of about .1-30%. The dough can also have a filling and other geometrical shapes such as triangles, squares, rectangles, animal shapes or any other shapes. The dough is baked at 175 degree C for 20-40 minutes. (see pages 2,3-5,7,10 and example 1)

With respect to claims 1,10,8 and 7, Blaschke et al do not disclose baking the bar dough. They do not disclose the size as in claims 3,7,13, the inclusion of cold swelling starch as in claim 4, the addition of emulsifier as in claims 5,7,14,25 and the margin as in claim 9.

With respect to the solid fat index claimed, it is obvious the fat disclosed by Blaschke et al has the same solid fat index because the same type of fat is used as disclosed in the instant specification. It would have been obvious to one skilled in the art to bake the whole block of dough in the Blaschke et al process instead of first breaking the block into pieces. The baking of the entire block saves time on breaking the block into pieces and separating the pieces is easier after the dough is baked than before it is baked. It would have been obvious to make the block in any size desired; this would have been an obvious matter of preference depending on the quantity wanted. As disclosed in example 1, the dough includes starch; in absence of showing of unexpected result or criticality, it would have been obvious to one to one skilled in the art to add any type of starch depending on properties such viscosity, firmness. The type

of starch used can readily be determined by one skilled in the art. It would also have been within the skilled of one in the art to determine the appropriate baking pan size to give the dough the proper space to flow. It would also have been obvious to add an emulsifier to improve the texture of the product; adding an additive for it art-recognized function would have been obvious to one skilled in the art. The amount can readily be determined by one skilled in the art.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Narayanaswamy et al disclosed refrigerated dough products.

Gavie et al. Disclose sweet dough tray.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Reference AC which corresponds to DE 2644598A1 was not considered because applicant did not include an abstract or a discussion of how the reference is relevant to the claimed invention.

Friday, June 25, 2004

LIEN TRAN
PRIMARY EXAMINER
Group 1700